

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5953 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SIDDHARTHBHAI B SHAH

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioners

MR BG PATEL for Respondent No. 2, 3, 4, 5, 6, 7, 8

MR SA PANDYA Ld. AGP for State.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 07/04/99

ORAL JUDGEMENT

The petitioners in this petition under Article 227 of the Constitution of India, have challenged the orders ANnexures-D,E and F passed against them by the Collector, Mehsana, Gujarat Revenue Tribunal and Additional Secretary (Appeals) Revenue Department, Gujarat State respectively.

The facts stated by the petitioners in this

petition reveal that the petitioners own and cultivated the land bearing Survey No. 986 Part situated in the sim of village Unjha, tal. Sidhpur, District Mehsana. Since the petitioners are cultivating this land, it is the say of the petitioners that they are agriculturists within the meaning of the provisions of Bombay Tenancy and Agricultural Lands Act. The petitioners also purchased certain lands of village Unava, Tal. Sidhhpur of Mehsana district at a distance of hardly 2 to 3 kms. from Unjha. It is the case of the petitioners that on the basis of the sale deeds in respect of the said lands, entries were made in the revenue records. However, the Mamlatdar, Sidhpur refused to certify the said entries on the ground that the petitioners were not agriculturists. The Talati of village Unava by his letter dated 23.4.1986 informed the petitioner about the said decision of the Mamlatdar not to certify the aforesaid entries in the revenue records. The petitioners challenged the said decision by filing an appeal before the Deputy Collector, Patan being R.T.S. Appeal No. 95 of 1986. The Deputy Collector, vide his order, Annexure-C, held in favour of the petitioners by observing that the petitioners were agriculturists and were entitled to purchase the lands in dispute. He, therefore, directed the Mamlatdar to certify the entries in the revenue record. It appears that the Collector, Mehsana took up the matter in suo motu revision and questioned the legality of the order passed by the Deputy Collector. The said proceedings were numbered as R.T.S. Revision Application No. 15 of 1988. The Collector, Mehsana by his order dated 20.2.1989 allowed the revision application and set aside the order passed by the Deputy Collector, Annexure-D to the petition. The petitioners preferred a Revision Application being No. TEN.B.A. 343 of 1989 before the Gujarat Revenue Tribunal. The Tribunal by its judgment and order dated 31.8.1989, Annexure-E, held that it has no jurisdiction to entertain the said revision application and returned the said revision application to the petitioners for being presented before the appropriate authority. The petitioners, thereafter preferred a Revision Application No. S.R.D.HaKaPa/MaSaNa/ 18 of 1989 before the Additional Chief Secretary (Appeal), Revenue Department, Gujarat State, Ahmedabad. It was heard by the Deputy Secretary (Appeal), who by his order dated 31.1.1990/1.6.1990 dismissed the said revision application, ANNEXURE-F to the petition, and remanded the matter to the Mamlatdar and A.L.T. Sidhpur for taking proceedings under section 84C of the Tenancy Act. As stated above, the petitioners have challenged the orders at Annexures-D, E & F in this petition.

Mr AJ Patel, learned counsel appearing for the petitioners submitted that the order passed by the Collector as well as Deputy Secretary, Annexures-D and F are illegal and without authority of law inasmuch as the said authorities have decided the status of the petitioners as agriculturists in R.T.S. proceedings. In the submission of Mr Patel, whether petitioners are agriculturists or not is a question cannot be decided in the proceedings under rule 108 of the Gujarat Land Revenue Rules, 1972. I find considerable substance in the submission of Mr. Patel. There is no dispute to the fact that the petitioners are occupying and cultivating the lands bearing survey no. 986 Part, situated in the sim of village Unjha. It is also not in dispute that the petitioners purchased certain lands of village Unava and the distance between Unjha and Unava is only 2 to 3 kms. and is in any way, within the limits of 8 kms. Even though the entries were made on the basis of the sale deeds in respect of the lands purchased by the petitioners in the revenue records, however, the Mamlatdar, Sidhpur refused to certify the said entries on the ground that the petitioners were not agriculturists. So far as the proceedings under Rule 108 of the Rules, popularly known as R.T.S. proceedings are concerned, it is now well settled that entries made in the revenue records have primarily a fiscal value and they do not create any title. Such mutations have to follow either the documents of title or the orders passed by the competent authority under special enactments. Independently, the revenue authorities have mentioned rule 108 of the Rules, cannot pass orders of cancelling the entries on an assumption that the transactions recorded in the entries are against the provisions of the particular enactment. Whether the transactions is valid or not has to be examined by the competent authority under the particular enactments by following the procedure prescribed therein and by giving an opportunity of hearing to the concerned parties likely to be affected by any order that may be passed. Since, in the instant case, the Collector as well as Deputy Secretary had decided the question that the petitioners are not agriculturists within the meaning of Bombay Tenancy Act. In R.T.S. proceedings, I am of the opinion that the authorities have acceded their jurisdiction in deciding the question about the status of the petitioners. In view of the final direction given by the Deputy Secretary, directing the Mamlatdar and A.L.T., Disdhdhpur to initiate the proceedings under section 84C of the Tenancy Act, and if, this finding that the petitioners are not agriculturists remains, in that event, it will

not be possible for the petitioners to urge before the Mamlatdar and A.L.T. that they are agriculturists. Since the proceedings under section 84C of the Act is a proceeding where the concerned party can come out with a case of being agriculturist by leading an appropriate evidence, the finding given by the Collector as well as Deputy Secretary vide orders Annexures-D and F will completely block the case of the petitioners in the proceedings under section 84C of the Act, therefore, the finding recorded in the Orders Annexures-D and F are required to be set aside. Similarly, the direction given in order Annexure-F to the Deputy Collector, Patan to initiate the proceeding in review with respect to entry no. 6652 of land bearing survey no. 986 of Unjha is also uncalled for.

In view of this discussion, this petition is allowed. The Orders Annexures-D, E & F passed against the petitioners are quashed and set aside. It is hereby declared that the finding recorded by the Collector, Mehsana as well as Deputy Secretary, Revenue Department, vide orders Annexures-D & F that the petitioners are not agriculturists, will not come in the way of the petitioners in any proceedings including the proceedings under sec. 84C of the Tenancy Act, in other words, the petitioners are entitled to prove that they are agriculturists within the meaning of Tenancy Act, in any proceedings. Rule is made absolute accordingly with no order as to costs.
